

Conference Engrossed

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

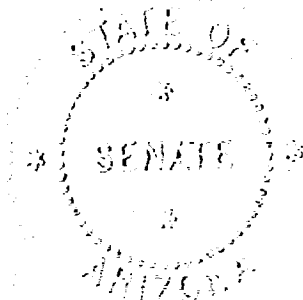
CHAPTER 325

**SENATE BILL 1429**

AN ACT

AMENDING SECTIONS 8-382, 13-703, 13-703.03 AND 13-4401, ARIZONA REVISED STATUTES; AMENDING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 255, SECTION 2; AMENDING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 255, SECTION 3; RELATING TO SENTENCING; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-382, Arizona Revised Statutes, is amended to  
3 read:

4 8-382. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accused" means a juvenile who is referred to juvenile court for  
7 committing a delinquent act.

8 2. "Appellate proceeding" means a review of a lower court's decision  
9 before the state court of appeals, the state supreme court, a federal court  
10 of appeals or the United States supreme court.

11 3. "Arrest" means the actual custodial restraint or temporary custody  
12 of a person.

13 4. "Court" means the juvenile division of the superior court when  
14 exercising its jurisdiction over children in any proceeding relating to  
15 delinquency.

16 5. "Crime victim advocate" means a person who is employed or  
17 authorized by a public entity or a private entity that receives public  
18 funding primarily to provide counseling, treatment or other supportive  
19 assistance to crime victims.

20 6. "Custodial agency" means any law enforcement officer or agency, a  
21 sheriff, a county juvenile detention center, the department of juvenile  
22 corrections or a secure mental health facility that has custody of a person  
23 who is arrested or in custody for a delinquent or incorrigible offense.

24 7. "Delinquency proceeding" means any hearing, argument or other  
25 matter that is scheduled or held by a juvenile court judge, commissioner or  
26 hearing officer relating to an alleged or adjudicated delinquent offense.

27 8. "Delinquent" means a child who is adjudicated to have committed a  
28 delinquent act.

29 9. "Delinquent act" means an act to which this article applies  
30 pursuant to section 8-381.

31 10. "Detention hearing" means the accused's initial appearance before  
32 the court to determine release prior to adjudication.

33 11. "Final disposition" means the ultimate termination of the  
34 delinquency proceeding by a court, including dismissal, acquittal, transfer  
35 to adult court or imposition of a disposition after an adjudication for a  
36 delinquent offense.

37 12. "Immediate family" means a victim's spouse, parent, child, sibling,  
38 grandparent or lawful guardian.

39 13. "Juvenile defendant" means a juvenile against whom a petition is  
40 filed seeking to have the juvenile adjudicated delinquent.

41 14. "Lawful representative" means a person who is designated by the  
42 victim or appointed by the court and who will act in the best interests of  
43 the victim.

44 15. "Postadjudication release" means release on probation, intensive  
45 probation, work furlough, community supervision or home detention, release on

1 conditional liberty pursuant to section 41-2818 by the department of juvenile  
2 corrections or any other permanent, conditional or temporary release from  
3 confinement, discharge or completion of commitment by the department of  
4 juvenile corrections, a sheriff, a municipal jail, a juvenile detention  
5 center, a residential treatment facility or a secure mental health facility.

6 16. "Postadjudication review hearing" means a hearing that is held in  
7 open court and that involves a request by the juvenile for review of a  
8 disposition.

9 17. "Postarrest release" means the discharge of the accused from  
10 confinement.

11 18. "Release" means no longer in the custody of the custodial agency  
12 and includes transfer from one custodial agency to another custodial agency.

13 19. "Rights" means any right granted to the victim by the laws of this  
14 state.

15 20. "Victim" means a person against whom the delinquent act was  
16 committed, or if the person is killed or incapacitated, the person's  
17 ~~immediate family~~ SPOUSE, PARENT, CHILD, GRANDPARENT OR SIBLING, ANY OTHER  
18 PERSON RELATED TO THE PERSON BY CONSANGUINITY OR AFFINITY TO THE SECOND  
19 DEGREE or ANY other lawful representative OF THE PERSON, except if the person  
20 SPOUSE, PARENT, CHILD, GRANDPARENT, SIBLING, OTHER PERSON RELATED TO THE  
21 PERSON BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR OTHER LAWFUL  
22 REPRESENTATIVE is in custody for an offense or is the accused.

23 Sec. 2. Section 13-703, Arizona Revised Statutes, is amended to read:

24 13-703. Sentence of death or life imprisonment; aggravating and  
25 mitigating circumstances; definition

26 A. If the state has filed a notice of intent to seek the death penalty  
27 and the defendant is convicted of first degree murder as defined in section  
28 13-1105, the defendant shall be sentenced to death or imprisonment in the  
29 custody of the state department of corrections for life or natural life as  
30 determined and in accordance with the procedures provided in section  
31 13-703.01. A defendant who is sentenced to natural life is not eligible for  
32 commutation, parole, work furlough, work release or release from confinement  
33 on any basis. If the defendant is sentenced to life, the defendant shall not  
34 be released on any basis until the completion of the service of twenty-five  
35 calendar years if the murdered person was fifteen or more years of age and  
36 thirty-five years if the murdered person was under fifteen years of age.

37 B. At the aggravation phase of the sentencing proceeding that is held  
38 pursuant to section 13-703.01, the admissibility of information relevant to  
39 any of the aggravating circumstances set forth in subsection F of this  
40 section shall be governed by the rules of evidence applicable to criminal  
41 trials. The burden of establishing the existence of any of the aggravating  
42 circumstances set forth in subsection F of this section is on the  
43 prosecution. The prosecution must prove the existence of the aggravating  
44 circumstances beyond a reasonable doubt.

C. At the penalty phase of the sentencing proceeding that is held pursuant to section 13-703.01, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility under the rules governing admission of evidence at criminal trials. The burden of establishing the existence of the mitigating circumstances included in subsection G of this section is on the defendant. The defendant must prove the existence of the mitigating circumstances by a preponderance of the evidence. If the trier of fact is a jury, the jurors do not have to agree unanimously that a mitigating circumstance has been proven to exist. Each juror may consider any mitigating circumstance found by that juror in determining the appropriate penalty.

D. Evidence that is admitted at the trial and that relates to any aggravating or mitigating circumstances shall be deemed admitted as evidence at a sentencing proceeding if the trier of fact considering that evidence is the same trier of fact that determined the defendant's guilt. The prosecution and the defendant shall be permitted to rebut any information received at the aggravation or penalty phase of the sentencing proceeding and shall be given fair opportunity to present argument as to whether the information is sufficient to establish the existence of any of the circumstances included in subsections F and G of this section.

E. In determining whether to impose a sentence of death or life imprisonment, the trier of fact shall take into account the aggravating and mitigating circumstances that have been proven. The trier of fact shall impose a sentence of death if the trier of fact finds one or more of the aggravating circumstances enumerated in subsection F of this section and then determines that there are no mitigating circumstances sufficiently substantial to call for leniency.

F. The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

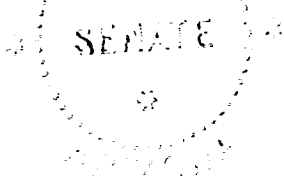
1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

2. The defendant has been or was previously convicted of a serious offense, whether preparatory or completed. Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph.

3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the person murdered during the commission of the offense.

4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

5. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.



1           6. The defendant committed the offense in an especially heinous, cruel  
2 or depraved manner.

3           7. The defendant committed the offense while:

4           (a) In the custody of or on authorized or unauthorized release from  
5 the state department of corrections, a law enforcement agency or a county or  
6 city jail.

7           (b) On probation for a felony offense.

8           8. The defendant has been convicted of one or more other homicides, as  
9 defined in section 13-1101, that were committed during the commission of the  
10 offense.

11          9. The defendant was an adult at the time the offense was committed or  
12 was tried as an adult and the murdered person was under fifteen years of age  
13 or was seventy years of age or older.

14          10. The murdered person was an on duty peace officer who was killed in  
15 the course of performing the officer's official duties and the defendant  
16 knew, or should have known, that the murdered person was a peace officer.

17          11. THE DEFENDANT COMMITTED THE OFFENSE WITH THE INTENT TO PROMOTE,  
18 FURTHER OR ASSIST THE OBJECTIVES OF A CRIMINAL STREET GANG OR CRIMINAL  
19 SYNDICATE OR TO JOIN A CRIMINAL STREET GANG OR CRIMINAL SYNDICATE.

20          12. THE DEFENDANT COMMITTED THE OFFENSE TO PREVENT A PERSON'S  
21 COOPERATION WITH AN OFFICIAL LAW ENFORCEMENT INVESTIGATION, TO PREVENT A  
22 PERSON'S TESTIMONY IN A COURT PROCEEDING, IN RETALIATION FOR A PERSON'S  
23 COOPERATION WITH AN OFFICIAL LAW ENFORCEMENT INVESTIGATION OR IN RETALIATION  
24 FOR A PERSON'S TESTIMONY IN A COURT PROCEEDING.

25          13. THE OFFENSE WAS COMMITTED IN A COLD, CALCULATED MANNER WITHOUT  
26 PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

27          6. The trier of fact shall consider as mitigating circumstances any  
28 factors proffered by the defendant or the state that are relevant in  
29 determining whether to impose a sentence less than death, including any  
30 aspect of the defendant's character, propensities or record and any of the  
31 circumstances of the offense, including but not limited to the following:

32           1. The defendant's capacity to appreciate the wrongfulness of his  
33 conduct or to conform his conduct to the requirements of law was  
34 significantly impaired, but not so impaired as to constitute a defense to  
35 prosecution.

36           2. The defendant was under unusual and substantial duress, although  
37 not such as to constitute a defense to prosecution.

38           3. The defendant was legally accountable for the conduct of another  
39 under the provisions of section 13-303, but his participation was relatively  
40 minor, although not so minor as to constitute a defense to prosecution.

41           4. The defendant could not reasonably have foreseen that his conduct  
42 in the course of the commission of the offense for which the defendant was  
43 convicted would cause, or would create a grave risk of causing, death to  
44 another person.

45           5. The defendant's age.

1 H. For the purposes of this section, "serious offense" means any of  
2 the following offenses if committed in this state or any offense committed  
3 outside this state that if committed in this state would constitute one of  
4 the following offenses:

- 5 1. First degree murder.
- 6 2. Second degree murder.
- 7 3. Manslaughter.
- 8 4. Aggravated assault resulting in serious physical injury or  
9 committed by the use, threatened use or exhibition of a deadly weapon or  
10 dangerous instrument.
- 11 5. Sexual assault.
- 12 6. Any dangerous crime against children.
- 13 7. Arson of an occupied structure.
- 14 8. Robbery.
- 15 9. Burglary in the first degree.
- 16 10. Kidnapping.
- 17 11. Sexual conduct with a minor under fifteen years of age.
- 18 12. BURGLARY IN THE SECOND DEGREE.
- 19 13. TERRORISM.

20 Sec. 3. Section 13-703.01, Arizona Revised Statutes, as amended by  
21 Laws 2003, chapter 255, section 2, is amended to read:

22 13-703.01. Sentences of death, life imprisonment or natural  
23 life; imposition; sentencing proceedings;  
24 definitions

25 A. If the state has filed a notice of intent to seek the death penalty  
26 and the defendant is convicted of first degree murder, the trier of fact at  
27 the sentencing proceeding shall determine whether to impose a sentence of  
28 death in accordance with the procedures provided in this section. If the  
29 trier of fact determines that a sentence of death is not appropriate, or if  
30 the state has not filed a notice of intent to seek the death penalty, and the  
31 defendant is convicted of first degree murder, the court shall determine  
32 whether to impose a sentence of life or natural life.

33 B. Before trial, the prosecution shall notice one or more of the  
34 aggravating circumstances under section 13-703, subsection F.

35 C. If the trier of fact finds the defendant guilty of first degree  
36 murder, the trier of fact shall then immediately determine whether one or  
37 more alleged aggravating circumstances have been proven. This proceeding is  
38 the aggravation phase of the sentencing proceeding.

39 D. If the trier of fact finds that one or more of the alleged  
40 aggravating circumstances have been proven, the trier of fact shall then  
41 immediately determine whether the death penalty should be imposed. This  
42 proceeding is the penalty phase of the sentencing proceeding.

43 E. At the aggravation phase, the trier of fact shall make a special  
44 finding on whether each alleged aggravating circumstance has been proven  
45 based on the evidence that was presented at the trial or at the aggravation

1 phase. If the trier of fact is a jury, a unanimous verdict is required to  
2 find that the aggravating circumstance has been proven. If the trier of fact  
3 unanimously finds that an aggravating circumstance has not been proven, the  
4 defendant is entitled to a special finding that the aggravating circumstance  
5 has not been proven. If the trier of fact unanimously finds no aggravating  
6 circumstances, the court shall then determine whether to impose a sentence of  
7 life or natural life on the defendant.

8 F. The penalty phase shall be held immediately after the trier of fact  
9 finds at the aggravation phase that one or more of the aggravating  
10 circumstances under section 13-703, subsection F have been proven. A finding  
11 by the trier of fact that any of the remaining aggravating circumstances  
12 alleged has not been proven or the inability of the trier of fact to agree on  
13 the issue of whether any of the remaining aggravating circumstances alleged  
14 has been proven shall not prevent the holding of the penalty phase.

15 G. At the penalty phase, the defendant and the state may present any  
16 evidence that is relevant to the determination of whether there is mitigation  
17 that is sufficiently substantial to call for leniency. In order for the  
18 trier of fact to make this determination, the state may present any evidence  
19 that demonstrates that the defendant should not be shown leniency.

20 H. The trier of fact shall determine unanimously whether death is the  
21 appropriate sentence. If the trier of fact is a jury and the jury  
22 unanimously determines that the death penalty is not appropriate, the court  
23 shall determine whether to impose a sentence of life or natural life.

24 I. If the trier of fact at any prior phase of the trial is the same  
25 trier of fact at the subsequent phase, any evidence that was presented at any  
26 prior phase of the trial shall be deemed admitted as evidence at any  
27 subsequent phase of the trial.

28 J. At the aggravation phase, if the trier of fact is a jury, the jury  
29 is unable to reach a verdict on any of the alleged aggravating circumstances  
30 and the jury has not found that at least one of the alleged aggravating  
31 circumstances has been proven, the court shall dismiss the jury and shall  
32 impanel a new jury. The new jury shall not retry the issue of the  
33 defendant's guilt or the issue regarding any of the aggravating circumstances  
34 that the first jury found not proved by unanimous verdict. If the new jury  
35 is unable to reach a unanimous verdict, the court shall impose a sentence of  
36 life or natural life on the defendant.

37 K. At the penalty phase, if the trier of fact is a jury and the jury  
38 is unable to reach a verdict, the court shall dismiss the jury and shall  
39 impanel a new jury. The new jury shall not retry the issue of the  
40 defendant's guilt or the issue regarding any of the aggravating circumstances  
41 that the first jury found by unanimous verdict to be proved or not  
42 proved. If the new jury is unable to reach a unanimous verdict, the court  
43 shall impose a sentence of life or natural life on the defendant.

44 L. If the jury that rendered a verdict of guilty is not the jury first  
45 impaneled for the aggravation phase, the jury impaneled in the aggravation

1 phase shall not retry the issue of the defendant's guilt. If the jury  
2 impaneled in the aggravation phase is unable to reach a verdict on any of the  
3 alleged aggravating circumstances and the jury has not found that at least  
4 one of the alleged aggravating circumstances has been proven, the court shall  
5 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
6 the issue of the defendant's guilt or the issue regarding any of the  
7 aggravating circumstances that the first jury found not proved by unanimous  
8 verdict. If the new jury is unable to reach a unanimous verdict, the court  
9 shall impose a sentence of life or natural life on the defendant.

10 M. Alternate jurors who are impaneled for the trial in a case in which  
11 the offense is punishable by death shall not be excused from the case until  
12 the completion of the sentencing proceeding.

13 N. If the sentence of a person who was sentenced to death is  
14 overturned, the person shall be resentenced pursuant to this section by a  
15 jury that is specifically impaneled for this purpose as if the original  
16 sentencing had not occurred.

17 O. In any case that requires sentencing or resentencing in which the  
18 defendant has been convicted of an offense that is punishable by death and in  
19 which the trier of fact was a judge or a jury that has since been discharged,  
20 the defendant shall be sentenced or resentenced pursuant to this section by a  
21 jury that is specifically impaneled for this purpose.

22 P. The trier of fact shall make all factual determinations required by  
23 this section or the Constitution of the United States or this state to impose  
24 a death sentence. IF THE DEFENDANT BEARS THE BURDEN OF PROOF, THE ISSUE  
25 SHALL BE DETERMINED IN THE PENALTY PHASE. IF THE STATE BEARS THE BURDEN OF  
26 PROOF, THE ISSUE SHALL BE DETERMINED IN THE AGGRAVATION PHASE.

27 Q. If the death penalty was not alleged or was alleged but not  
28 imposed, the court shall determine whether to impose a sentence of life or  
29 natural life. In determining whether to impose a sentence of life or natural  
30 life, the court:

31 1. May consider any evidence introduced before sentencing or at any  
32 other sentencing proceeding.

33 2. Shall consider the aggravating and mitigating circumstances listed  
34 in section 13-702 and any statement made by a victim.

35 R. Subject to the provisions of section 13-703, subsection B, a victim  
36 has the right to be present at the aggravation phase and to present any  
37 information that is relevant to the proceeding. A victim has the right to be  
38 present and to present information at the penalty phase. At the penalty  
39 phase, the victim may present information about the murdered person and the  
40 impact of the murder on the victim and other family members and may submit a  
41 victim impact statement in any format to the trier of fact.

42 S. For the purposes of this section:

43 1. "Trier of fact" means a jury unless the defendant and the state  
44 waive a jury, in which case the trier of fact shall be the court.



1           2. "Victim" means the murdered person's spouse, parent, child,  
2 GRANDPARENT OR SIBLING, ANY OTHER PERSON RELATED TO THE MURDERED PERSON BY  
3 CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE or ANY other lawful  
4 representative OF THE MURDERED PERSON, except if the spouse, parent, child,  
5 GRANDPARENT, SIBLING, OTHER PERSON RELATED TO THE MURDERED PERSON BY  
6 CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE or other lawful representative  
7 is in custody for an offense or is the accused.

8           Sec. 4. Section 13-703.01, Arizona Revised Statutes, as amended by  
9 Laws 2003, chapter 255, section 3, is amended to read:

10           13-703.01. Sentences of death, life imprisonment or natural  
11 life; imposition; sentencing proceedings;  
12 definitions

13           A. If the state has filed a notice of intent to seek the death penalty  
14 and the defendant is convicted of first degree murder, the trier of fact at  
15 the sentencing proceeding shall determine whether to impose a sentence of  
16 death in accordance with the procedures provided in this section. If the  
17 trier of fact determines that a sentence of death is not appropriate, or if  
18 the state has not filed a notice of intent to seek the death penalty, and the  
19 defendant is convicted of first degree murder, the court shall determine  
20 whether to impose a sentence of life or natural life.

21           B. Before trial, the prosecution shall notice one or more of the  
22 aggravating circumstances under section 13-703, subsection F.

23           C. If the trier of fact finds the defendant guilty of first degree  
24 murder, the trier of fact shall then immediately determine whether one or  
25 more alleged aggravating circumstances have been proven. This proceeding is  
26 the aggravation phase of the sentencing proceeding.

27           D. If the trier of fact finds that one or more of the alleged  
28 aggravating circumstances have been proven, the trier of fact shall then  
29 immediately determine whether the death penalty should be imposed. This  
30 proceeding is the penalty phase of the sentencing proceeding.

31           E. At the aggravation phase, the trier of fact shall make a special  
32 finding on whether each alleged aggravating circumstance has been proven  
33 based on the evidence that was presented at the trial or at the aggravation  
34 phase. If the trier of fact is a jury, a unanimous verdict is required to  
35 find that the aggravating circumstance has been proven. If the trier of fact  
36 unanimously finds that an aggravating circumstance has not been proven, the  
37 defendant is entitled to a special finding that the aggravating circumstance  
38 has not been proven. If the trier of fact unanimously finds no aggravating  
39 circumstances, the court shall then determine whether to impose a sentence of  
40 life or natural life on the defendant.

41           F. The penalty phase shall be held immediately after the trier of fact  
42 finds at the aggravation phase that one or more of the aggravating  
43 circumstances under section 13-703, subsection F have been proven. A finding  
44 by the trier of fact that any of the remaining aggravating circumstances  
45 alleged has not been proven or the inability of the trier of fact to agree on

1 the issue of whether any of the remaining aggravating circumstances alleged  
2 has been proven shall not prevent the holding of the penalty phase.

3 G. At the penalty phase, the defendant and the state may present any  
4 evidence that is relevant to the determination of whether there is mitigation  
5 that is sufficiently substantial to call for leniency. In order for the  
6 trier of fact to make this determination, the state may present any evidence  
7 that demonstrates that the defendant should not be shown leniency.

8 H. The trier of fact shall determine unanimously whether death is the  
9 appropriate sentence. If the trier of fact is a jury and the jury  
10 unanimously determines that the death penalty is not appropriate, the court  
11 shall determine whether to impose a sentence of life or natural life.

12 I. If the trier of fact at any prior phase of the trial is the same  
13 trier of fact at the subsequent phase, any evidence that was presented at any  
14 prior phase of the trial shall be deemed admitted as evidence at any  
15 subsequent phase of the trial.

16 J. At the aggravation phase, if the trier of fact is a jury, the jury  
17 is unable to reach a verdict on any of the alleged aggravating circumstances  
18 and the jury has not found that at least one of the alleged aggravating  
19 circumstances has been proven, the court shall dismiss the jury and shall  
20 impanel a new jury. The new jury shall not retry the issue of the  
21 defendant's guilt or the issue regarding any of the aggravating circumstances  
22 that the first jury found not proved by unanimous verdict. If the new jury  
23 is unable to reach a unanimous verdict, the court shall impose a sentence of  
24 life or natural life on the defendant.

25 K. At the penalty phase, if the trier of fact is a jury and the jury  
26 is unable to reach a verdict, the court shall dismiss the jury and shall  
27 impanel a new jury. The new jury shall not retry the issue of the  
28 defendant's guilt or the issue regarding any of the aggravating circumstances  
29 that the first jury found by unanimous verdict to be proved or not  
30 proved. If the new jury is unable to reach a unanimous verdict, the court  
31 shall impose a sentence of life or natural life on the defendant.

32 L. If the jury that rendered a verdict of guilty is not the jury first  
33 impaneled for the aggravation phase, the jury impaneled in the aggravation  
34 phase shall not retry the issue of the defendant's guilt. If the jury  
35 impaneled in the aggravation phase is unable to reach a verdict on any of the  
36 alleged aggravating circumstances and the jury has not found that at least  
37 one of the alleged aggravating circumstances has been proven, the court shall  
38 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
39 the issue of the defendant's guilt or the issue regarding any of the  
40 aggravating circumstances that the first jury found not proved by unanimous  
41 verdict. If the new jury is unable to reach a unanimous verdict, the court  
42 shall impose a sentence of life or natural life on the defendant.

43 M. Alternate jurors who are impaneled for the trial in a case in which  
44 the offense is punishable by death shall not be excused from the case until  
45 the completion of the sentencing proceeding.

1 N. If the sentence of a person who was sentenced to death is  
2 overturned, the person shall be resentenced pursuant to this section by a  
3 jury that is specifically impaneled for this purpose as if the original  
4 sentencing had not occurred.

5 O. In any case that requires sentencing or resentencing in which the  
6 defendant has been convicted of an offense that is punishable by death and in  
7 which the trier of fact was a judge or a jury that has since been discharged,  
8 the defendant shall be sentenced or resentenced pursuant to this section by a  
9 jury that is specifically impaneled for this purpose.

10 P. The trier of fact shall make all factual determinations required by  
11 this section or the Constitution of the United States or this state to impose  
12 a death sentence. IF THE DEFENDANT BEARS THE BURDEN OF PROOF, THE ISSUE  
13 SHALL BE DETERMINED IN THE PENALTY PHASE. IF THE STATE BEARS THE BURDEN OF  
14 PROOF, THE ISSUE SHALL BE DETERMINED IN THE AGGRAVATION PHASE.

15 Q. If the death penalty was not alleged or was alleged but not  
16 imposed, the court shall determine whether to impose a sentence of life or  
17 natural life. In determining whether to impose a sentence of life or natural  
18 life, the court:

19 1. May consider any evidence introduced before sentencing or at any  
20 other sentencing proceeding.

21 2. Shall consider the aggravating and mitigating circumstances listed  
22 in section 13-702 and any statement made by a victim.

23 R. Subject to the provisions of section 13-703, subsection B, a victim  
24 has the right to be present at the aggravation phase and to present any  
25 information that is relevant to the proceeding. A victim has the right to be  
26 present at the penalty phase. At the penalty phase, the victim has the right  
27 to be heard pursuant to section 13-4426.

28 S. For the purposes of this section:

29 1. "Trier of fact" means a jury unless the defendant and the state  
30 waive a jury, in which case the trier of fact shall be the court.

31 2. "Victim" means the murdered person's spouse, parent, child,  
32 GRANDPARENT OR SIBLING, ANY OTHER PERSON RELATED TO THE MURDERED PERSON BY  
33 CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE or ANY other lawful  
34 representative OF THE MURDERED PERSON, except if the spouse, parent, child,  
35 GRANDPARENT, SIBLING, OTHER PERSON RELATED TO THE MURDERED PERSON BY  
36 CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE or other lawful representative  
37 is in custody for an offense or is the accused.

38 Sec. 5. Section 13-703.03, Arizona Revised Statutes, is amended to  
39 read:

40 13-703.03. Capital defendant prescreening evaluation for  
41 competency and sanity

42 A. If the state files a notice of intent to seek the death penalty,  
43 unless the defendant objects, the court shall appoint a psychologist OR  
44 PSYCHIATRIST licensed pursuant to title 32, chapter 13, 17 OR 19.1 to conduct

1 a prescreening evaluation to determine if reasonable grounds exist to conduct  
2 another examination to determine the following:

3 1. The defendant's competency to stand trial.  
4 2. Whether the defendant was sane at the time the defendant allegedly  
5 committed the offense.

6 B. The court may appoint separate PSYCHOLOGICAL experts to conduct  
7 each of the evaluations ordered pursuant to subsection A.

8 C. The court shall seal ~~a psychologist's~~ ANY PSYCHOLOGICAL EXPERT'S  
9 report PURSUANT TO THIS SECTION, and the report shall only be available to  
10 the defendant. The report shall be released on the motion of any party if  
11 the defendant introduces the report in the present case, RAISES A MENTAL  
12 HEALTH DEFENSE AT TRIAL OR SENTENCING or is convicted of an offense in the  
13 present case and the sentence is final.

14 D. If the prescreening evaluation indicates that reasonable grounds  
15 exist to conduct another examination as prescribed by subsection A, the court  
16 shall treat the prescreening evaluation as a preliminary examination pursuant  
17 to rule 11.2(c) of the ARIZONA rules of criminal procedure and shall proceed  
18 in accordance with rule 11 of the ARIZONA rules of criminal procedure.

19 Sec. 6. Section 13-4401, Arizona Revised Statutes, is amended to read:

20 13-4401. Definitions

21 In this chapter, unless the context otherwise requires:

22 1. "Accused" means a person who has been arrested for committing a  
23 criminal offense and who is held for an initial appearance or other  
24 proceeding before trial.

25 2. "Appellate proceeding" means a contested oral argument that is held  
26 in open court before the state court of appeals, the state supreme court, a  
27 federal court of appeals or the United States supreme court.

28 3. "Arrest" means the actual custodial restraint of a person or the  
29 person's submission to custody.

30 4. "Court" means all state, county and municipal courts in this state.

31 5. "Crime victim advocate" means a person who is employed or  
32 authorized by a public entity or a private entity that receives public  
33 funding primarily to provide counseling, treatment or other supportive  
34 assistance to crime victims.

35 6. "Criminal offense" means conduct that gives a peace officer or  
36 prosecutor probable cause to believe that a felony or that a misdemeanor  
37 involving physical injury, the threat of physical injury or a sexual offense  
38 has occurred.

39 7. "Criminal proceeding" means any hearing, argument or other matter  
40 that is scheduled by and held before a trial court but does not include any  
41 deposition, lineup, grand jury proceeding or other matter that is not held in  
42 the presence of the court.

43 8. "Custodial agency" means any law enforcement officer or agency, a  
44 sheriff or municipal jailer, the state department of corrections or a secure

1 mental health facility that has custody of a person who is arrested or in  
2 custody for a criminal offense.

3 9. "Defendant" means a person or entity that is formally charged by  
4 complaint, indictment or information of committing a criminal offense.

5 10. "Final disposition" means the ultimate termination of the criminal  
6 prosecution of a defendant by a trial court, including dismissal, acquittal  
7 or imposition of a sentence.

8 11. "Immediate family" means a victim's spouse, parent, child, sibling,  
9 grandparent or lawful guardian.

10 12. "Lawful representative" means a person who is designated by the  
11 victim or appointed by the court and who acts in the best interests of the  
12 victim.

13 13. "Post-arrest release" means the discharge of the accused from  
14 confinement on recognizance, bond or other condition.

15 14. "Post-conviction release" means parole, work furlough, community  
16 supervision, probation if the court waived community supervision pursuant to  
17 section 13-603, home arrest or any other permanent, conditional or temporary  
18 discharge from confinement in the custody of the state department of  
19 corrections or a sheriff or from confinement in a municipal jail or a secure  
20 mental health facility.

21 15. "Post-conviction relief proceeding" means a contested argument or  
22 evidentiary hearing that is held in open court and that involves a request  
23 for relief from a conviction or sentence.

24 16. "Prisoner" means a person who has been convicted of a criminal  
25 offense against a victim and who has been sentenced to the custody of the  
26 sheriff, the state department of corrections, a municipal jail or a secure  
27 mental health facility.

28 17. "Release" means no longer in the custody of a custodial agency and  
29 includes transfer from one custodial agency to another custodial agency.

30 18. "Rights" means any right that is granted to the victim by the laws  
31 of this state.

32 19. "Victim" means a person against whom the criminal offense has been  
33 committed, or if the person is killed or incapacitated, the person's  
34 ~~immediate family~~ SPOUSE, PARENT, CHILD, GRANDPARENT OR SIBLING, ANY OTHER  
35 PERSON RELATED TO THE PERSON BY CONSANGUINITY OR AFFINITY TO THE SECOND  
36 DEGREE or ANY other lawful representative OF THE PERSON, except if the person  
37 SPOUSE, PARENT, CHILD, GRANDPARENT, SIBLING, OTHER PERSON RELATED TO THE  
38 PERSON BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR OTHER LAWFUL  
39 REPRESENTATIVE is in custody for an offense or is the accused.

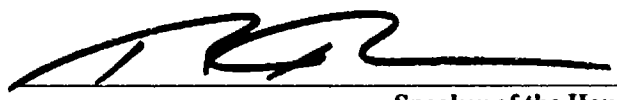
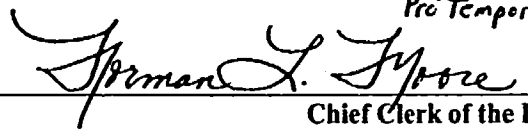
40 Sec. 7. Conditional enactment

41 Section 13-703.01, Arizona Revised Statutes, as amended by Laws 2003,  
42 chapter 255, section 3 and section 4 of this act, does not take effect unless  
43 the condition prescribed by Laws 2003, chapter 255, section 8, relating to  
44 victim sentencing recommendations, is met.

Passed the House April 12, 20 04

by the following vote: 39 Ayes,

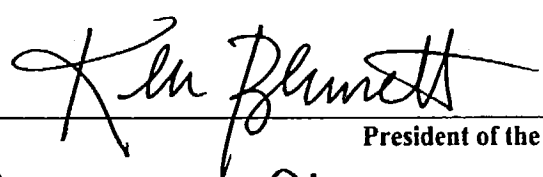

20 Nays, 1 Not Voting

  
Speaker of the House  
*Pro Tempore*  
  
Chief Clerk of the House

Passed the Senate March 10, 20 05

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

  
President of the Senate  
  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR  
This Bill was received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
\_\_\_\_\_  
Governor of Arizona


S.B. 1429

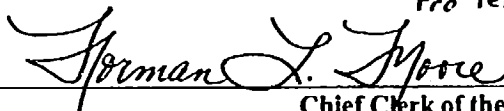
EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE  
This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
\_\_\_\_\_  
Secretary of State

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 10, 2005,  
by the following vote: 36 Ayes,

16 Nays, 8 Not Voting

  
Speaker of the House  
*Pro Tempore*

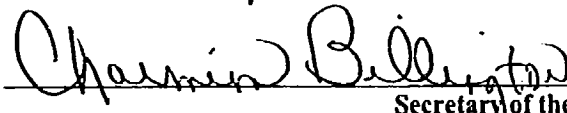
  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 4, 2005,  
by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 14<sup>th</sup> day of May, 2005


at 11:30 o'clock a. M.

  
Secretary to the Governor

Approved this 20 day of

May, 2005,

at 9:45 o'clock A. M.

  
Governor of Arizona

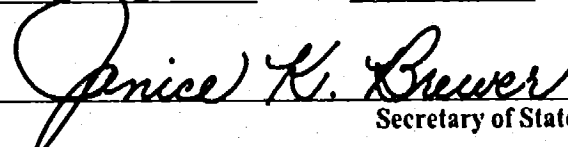
S.B. 1429

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2005

at 3:03 o'clock P. M.

  
Secretary of State